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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

12 Cr. 626 (ER)

5 RAYMOND CHRISTIAN, JAMES
6 WILLIAMS, TYRELL WHITAKER and
GLENN THOMAS, ,

7 Defendants.

8 -----x

9
10 January 15, 2014
10:04 a.m.

11 Before:

12 HON. EDGARDO RAMOS,

13 District Judge
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APPEARANCES

PREET BHARARA

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Southern District of New York

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1 (Case called)

2 MR. BAUER: Your Honor, good morning. Andrew Bauer
3 and Kan Nawaday for the government.

4 THE COURT: Good morning.

5 MR. GREENFIELD: Good morning, your Honor. David
6 Greenfield and Mr. Anthony Strazza for Mr. Raymond Christian.

7 THE COURT: Good morning. Welcome, Mr. Greenfield.

8 MR. GREENFIELD: Thank you, sir.

9 MR. BUCHWALD: Good morning, your Honor. Don Buchwald
10 for Glenn Thomas who is in the first row closest to your Honor.

11 THE COURT: Good morning.

12 MS. STAFFORD: Good morning, your Honor. Ying
13 Stafford on behalf of Tyrell Whitaker. Mr. Goltzer is on trial
14 and Mr. Whitaker is in the first row there.

15 THE COURT: Good morning.

16 MR. JASPER: Good morning, Judge. Richard Jasper and
17 Susan Marcus for James Williams.

18 THE COURT: Good morning to you all and good morning
19 to you.

20 Mr. Bauer, why don't you start us off.

21 MR. BAUER: Judge, the primary purpose for us being
22 here today is to arraign the defendants on the superseding
23 indictment which was returned the last -- I was going to say
24 the last week of December but it was in late December.

25 THE COURT: And what are the substantive differences

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1 between S2 and S3 now?

2 MR. BAUER: The primary difference between S2 and S3,
3 the primary difference is really the prolonging of the drug
4 conspiracy count. In the S2 it was just in December 2010 and
5 now it is prolonged over several years, and then we have also
6 added an additional 924(c) count that tracks the drug
7 conspiracy.

8 THE COURT: Very well.

9 MR. BAUER: And I will note that the S3 has two less
10 defendants because they have pled.

11 THE COURT: Defense counsel, have you received a copy
12 of the superseding indictment?

13 MR. GREENFIELD: Yes, your Honor.

14 MR. BUCHWALD: Yes, your Honor.

15 THE COURT: Do you wish a public reading of the
16 indictment?

17 MR. GREENFIELD: No, your Honor.

18 MR. BUCHWALD: No, your Honor.

19 MR. JASPER: No, your Honor.

20 THE COURT: Mr. Greenfield, how does your client plead
21 to the superseding indictment; guilty or not guilty?

22 MR. GREENFIELD: Not guilty, your Honor.

23 THE COURT: Ms. Stafford, as to Mr. Whitaker?

24 MS. STAFFORD: Not guilty, your Honor.

25 THE COURT: Mr. Jasper, Ms. Marcus, as to

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1 Mr. Williams?

2 MR. JASPER: Not guilty, your Honor.

3 THE COURT: And Mr. Buchwald, as to Mr. Thomas.

4 MR. BUCHWALD: Not guilty, your Honor.

5 THE COURT: There are a couple other items we need to
6 discuss.

7 First of all, Ms. Stafford, what can you tell us
8 concerning the status of Mr. Whitaker's appeal?

9 MS. STAFFORD: Your Honor, the government filed their
10 response or their brief yesterday, as I understand it. We have
11 14 days to respond, which we will, and I assume that there is
12 no reason why we would not do it within the 14 days. I,
13 however, have not spoken to Mr. Goltzer so I would just
14 reserve. Potentially we may ask for an additional 5 or 10
15 days. And the way I understand the Second Circuit appeals
16 schedule is, within two weeks they schedule oral argument which
17 we would ask for and then after that I'm not sure.

18 THE COURT: What can you tell me about the status of
19 the case that Mr. Goltzer is currently on?

20 MS. STAFFORD: He is on trial at the moment and I do
21 not know when it is going to end. I think he has another
22 couple weeks.

23 THE COURT: Okay.

24 MS. STAFFORD: I can check on that and get back to
25 you, though.

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1 THE COURT: Yes, because I think that we are scheduled
2 for trial on April 21st, if I recall.

3 MR. BAUER: That's correct, your Honor.

4 THE COURT: And are the parties aware of any reason
5 why we would not be able to keep that date and that time?

6 MS. STAFFORD: No. We fully expect to go to trial on
7 the 21st unless there is something that has to do with the
8 appeal.

9 THE COURT: Okay.

10 Mr. Greenfield?

11 MR. GREENFIELD: I would like to bring to the Court's
12 attention the date was set prior to my stepping into the case.
13 I do have another case where there is a May 12th trial which
14 Mr. Bauer is also involved with -- he at one point was involved
15 in that case. One of them just has to change a little bit as
16 to time because I can't start something on the 21st of April,
17 run up to May 10 and jump into another courtroom.

18 So, I just want to bring that to the Court's
19 attention. If the Court is thinking of maybe moving the date I
20 would love it.

21 THE COURT: The Court was not thinking of moving the
22 date.

23 MR. GREENFIELD: Okay.

24 THE COURT: Mr. Buchwald?

25 MR. BUCHWALD: I also have a May 12th trial but Judge

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1 Marrero indicated he would be flexible if we were somehow going
2 on and it would be moved back a few days.

3 THE COURT: As I recall -- and Mr. Bauer can correct
4 me -- this case is anticipated to take a full two weeks. Am I
5 misremembering that?

6 MR. BAUER: Two, possibly into the third week as well,
7 your Honor.

8 THE COURT: Okay.

9 MR. GREENFIELD: That will run into the May 12 date.

10 THE COURT: Understood.

11 And I take it you were made aware of the trial date,
12 Mr. Greenfield, at the time you were appointed?

13 MR. GREENFIELD: Yes. Somebody told me it was going
14 to trial and that was it but I only learned of the May 12 date
15 after and I was assigned on that one very recently also.

16 THE COURT: Okay. So this one was set first?

17 MR. GREENFIELD: This was set first.

18 THE COURT: Okay. Very good. That's worth something.

19 MR. GREENFIELD: You can tell that to Judge Stein.

20 THE COURT: Judge who?

21 MR. GREENFIELD: Judge Stein.

22 THE COURT: He is senior now. Well, let's stick with
23 the April 21st date and see how it all plays out.

24 Mr. Jasper, did you wish to state anything in open
25 court concerning Mr. Williams and his absence today?

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1 MR. JASPER: Judge, I thought we might hold a
2 conference after this one involving Mr. Williams.

3 THE COURT: Very well.

4 Mr. Bauer, I take it there is no additional discovery
5 that needs to be produced in connection with the superseding
6 indictment?

7 MR. BAUER: That's correct, Judge. As I stated
8 earlier, much of the evidence that supports the new charges as
9 cooperating witness testimony, there is also -- and then there
10 are also prior arrests which those materials have already been
11 produced.

12 THE COURT: Okay.

13 Mr. Buchwald -- by the way, who is ringing? (phone
14 ringing) I am.

15 MR. BUCHWALD: With that reminder, though, I will turn
16 mine off.

17 (Defendant and counsel conferring)

18 MR. BUCHWALD: Your Honor, we had requested informally
19 on December 24th additional particulars concerning the new gun
20 count. This gun count relates to the extended drug conspiracy,
21 I guess possession and use of a gun in connection with the drug
22 conspiracy, as I recall. And so, we have asked for particulars
23 concerning the dates of the alleged gun possession. It was
24 obviously a gun possession in connection with the homicide that
25 was previously charged and Mr. Bauer has declined to give us

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1 the specific dates saying that it will be in the 3500 material.
2 We think that's inadequate as a matter of due process and it
3 may also, to the extent that the gun evidence which they plan
4 to introduce at trial was not presented to the grand jury it
5 would also be a violation of the grand jury clause of the Fifth
6 Amendment. So, we believe both as a matter of due process and
7 potentially as a matter of compliance with the grand jury
8 clause that we are entitled to greater specificity concerning
9 the particular weapon or weapons at issue.

10 THE COURT: What is the grand jury issue that you are
11 raising?

12 MR. BUCHWALD: They simply charge there was a gun
13 between 2008 and the day of the indictment which is 2011. Let
14 us suppose, for example, that they presented to the grand jury
15 some gun that the defendant possessed on January 10th of 2009
16 and subsequently they learned from cooperators that there are
17 three other guns at three different times and that their proof
18 at trial has to do with those three other charges and not with
19 the January 10th, 2009 gun. Well, that would mean, in essence,
20 that the defendant is being tried on a felony that the grand
21 jury didn't vote.

22 THE COURT: And I guess my question is what leads to
23 the assumption that the grand jury wasn't presented with that
24 evidence?

25 MR. BUCHWALD: The answer is we don't know.

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1 THE COURT: Okay.

2 MR. BUCHWALD: But the only way to know is to know
3 what are the guns that are charged.

4 THE COURT: Okay.

5 MR. BUCHWALD: Unless we are told what the charges are
6 then there is no way of assessing, ever, whether that was the
7 same charge that was presented to the grand jury.

8 So, to just say he had a gun somewhere during those
9 four years, it really doesn't comply with the notice
10 requirements of due process and potentially creates a problem
11 under the grand jury clause. But certainly as a matter of due
12 process that's not sufficient. It is one thing to say that
13 there is a drug conspiracy that exists over four years. We all
14 understand what that is but the 924 count is a substantive
15 count, it is he possessed a gun or used a gun in connection
16 with the drug conspiracy that was charged.

17 THE COURT: Okay.

18 MR. BUCHWALD: So we are entitled to know when that
19 was. They may not have a specific -- they might have an event,
20 they might have something that we can pin it to but right now
21 all we know is, well, somewhere during those four years they
22 contend that there was a gun and it is really impossible to
23 defend that. For them to say, well, you will learn about it in
24 the government's opening statement or you will learn about it
25 in the 3500 material is really not adequate. Even the Speedy

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1 Trial Act requires for a new charge that we have at least 30
2 days from the date of an indictment to go to trial. What
3 they're proposing is, well, we will get it in the 3500 material
4 and I don't think that's adequate.

5 THE COURT: Mr. Bauer?

6 MR. BAUER: Your Honor, on the grand jury point, as
7 you know, the proceedings before the grand jury are secretive.
8 We are not here to defend or otherwise explain what happened
9 before the grand jury but the grand jury did find probable
10 cause that the defendants possessed firearms between 2008 and
11 2012.

12 I think Mr. Buchwald's oral application or argument we
13 will say here, is akin to the bill of particulars argument that
14 he and the other defendants brought before you already. I know
15 it is a new charge but the reasoning that -- well, the
16 government's argument as to why he wasn't entitled to it and
17 the reasoning that I believe your Honor had stated when you
18 denied that motion apply here as well. We have it in the form
19 of discovery and also in the form of informal conversations
20 with counsel and also the motion papers that have already been
21 provided. We provided ample or more than sufficient
22 information with regards to the defendant as it relates to both
23 their sales of drugs and their possession of firearms. He is
24 asking for specifics of who or what specific gun on a specific
25 date with whom because that is what his letter had said also

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1 and that's not the type of information that he is entitled to
2 at this stage.

3 THE COURT: Remind me. Has this issue already been
4 briefed and decided? Is there something about the superseding
5 indictment that's different?

6 MR. BAUER: It is different in that there is a new
7 charge. This charge is, as Mr. Buchwald is saying, is an
8 almost five-year period in which we alleged that the defendants
9 possessed firearms. Prior, when they requested a bill of
10 particulars, that charge related to December 2010.

11 THE COURT: Okay.

12 MR. BAUER: So it is different but I think the logic
13 applied is the same.

14 THE COURT: Because the conspiracy is more expansive
15 now?

16 MR. BAUER: Exactly.

17 THE COURT: The time period.

18 MR. BAUER: Exactly.

19 MR. BUCHWALD: If I might, your Honor?

20 In the others there wasn't a gun charge before, now
21 there is the gun charge. Even with respect to the drug
22 conspiracy, your Honor, we had, in connection with the original
23 indictment, asked for a bill of particulars, the names of the
24 known co-conspirators. The government responded and your Honor
25 ruled that in view of the discovery -- and we are then dealing

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1 with the December 2010 event, the homicide -- we had the
2 extensive discovery concerning the government's theory of what
3 happened on the night of the homicide and the various people
4 involved and in view of the discovery there was, your Honor
5 declined to require the government to disclose the names of any
6 other known co-conspirators.

7 Now, at that point there was a finite group of people.
8 There were the six named defendants, there were one or two
9 names that they had given us in their memo of who was involved
10 on the night of the homicide. All of a sudden we now have a
11 four-year conspiracy. There is no other discovery that they
12 have given us, certainly have given me. Maybe the
13 co-defendants have had some other discovery concerning other
14 drug dealings or police reports or lab reports.

15 MR. GREENFIELD: Nothing.

16 MR. BUCHWALD: Anything to do with any other event
17 other than December. So, we haven't gotten anything. Maybe
18 they have lab reports but I gather not.

19 So, I did ask, therefore, in view of the elongated
20 time before your time, that they now provide us with the name
21 of other known co-conspirators. I believe it is in a different
22 posture than it was back then because we are not dealing with
23 simply the homicide period as to which there had been extensive
24 discovery, we are now dealing with four years. And if there
25 are other known co-conspirators in this drug conspiracy that

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1 they allege, it seems to me we should be told who they are
2 under whatever protective order is necessary. If somebody
3 doesn't want to have those names in the public record I
4 understand that. At least counsel need to know what potential
5 out-of-court declarations are going to be offered as of that
6 time.

7 THE COURT: And I take it that the parties have tried
8 informally to get this information from the government?

9 MR. BUCHWALD: Yes. We submitted a letter on December
10 24th asking for the gun particulars and for the names of known
11 co-conspirators with respect to the elongated drug conspiracy
12 and Mr. Bauer has responded, as he has today, that he declines
13 do it and that it will be available in the 3500 material.

14 THE COURT: Okay.

15 MR. BAUER: Judge, if I may suggest, I think that if
16 Mr. Buchwald wants to make this application formally to the
17 Court that he brief it in some form. But, what I will say is
18 that Mr. Nawaday and I will be available, we will make
19 ourselves available as we have in similar cases where there is
20 charges like this to have, as you said informally, what our
21 practice is is to maybe just have a conversation over the phone
22 and provide some broad strokes with defense counsel which may
23 alleviate some of this. I have a feeling it may not but we are
24 willing to try. I'm not sure that we are going to be naming
25 every co-conspirator and every date that the defendants

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1 possessed firearms but broad strokes of what the cooperators
2 might say is something that we are willing to do.

3 THE COURT: Obviously I'm not going to get involved in
4 those discussions but if defense counsel want to take Mr. Bauer
5 up on that invitation I would encourage you to do so. And if
6 you walk away from those conversations unsatisfied then given
7 that there is a different factual posture that we are in now I
8 would certainly entertain a motion on those two issues and
9 because there appear to be fairly limited you could make that
10 motion by way of a letter directed to the Court and I will
11 consider it. Okay?

12 MR. BUCHWALD: Thank you.

13 THE COURT: Is there anything else that we need to do
14 today, generally, with respect to the case?

15 MR. BAUER: Your Honor, no. I will note that when we
16 were last together you excluded time under the Speedy Trial Act
17 between November 4th and April 21st so I don't think we need to
18 do that here.

19 THE COURT: Very well.

20 Mr. Greenfield, did your client want to --

21 (Defendant and counsel conferring)

22 MR. BUCHWALD: Your Honor, in connection -- in
23 connection with the original trial date your Honor had set
24 certain parameters, as I recall, the 3500 and 404(b), I'm not
25 quite sure if I remember what they were, 30 days, but perhaps

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1 Mr. Bauer could remind us what the agreements or understandings
2 were so that we can all have those firmly in our mind because a
3 number of us I know have other trials before the April 23rd
4 trial so we are --

5 THE COURT: April 21st trial.

6 MR. BUCHWALD: -- April 21st trial; so that we can
7 budget our time.

8 THE COURT: I don't remember offhand what those
9 agreements were.

10 MR. BAUER: Judge, what I have written down was
11 pursuant to their motion for 404(b) notice that we agreed that
12 the government would provide that one month in advance of trial
13 as well and then expert notice also one month in advance of
14 trial. I don't have in my notes, although it does sound
15 somewhat familiar I don't have a date here for 3500. I would
16 be happy to agree upon one now.

17 THE COURT: Okay.

18 (counsel conferring)

19 MR. BAUER: Judge, I guess the government would be
20 comfortable providing 3500 material for its witnesses 10 days
21 before trial.

22 THE COURT: Okay. So two weeks or 10 days.

23 MR. GREENFIELD: I didn't hear that.

24 MR. BAUER: 10 days, I guess, is the Friday before the
25 Monday.

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1 THE COURT: Very well.

2 MR. GREENFIELD: Can we have a little sooner, a little
3 earlier than the date? It is hard to put it to good use for
4 preparation purposes when you are just given a whole bunch of
5 3500 material. I would ask for at least three weeks before
6 trial.

7 MR. BUCHWALD: Your Honor, as I understand it and
8 Mr. Bauer can correct me, but I think that his office is going
9 to take the position that normally it is taking in these kinds
10 of cases that we cannot give the 3500 material to our clients
11 in the jail, that we have to just be with them or have another
12 attorney with them to show it to them but we can't leave it
13 with them.

14 I assume you are going to take that position?

15 MR. BAUER: That's correct.

16 MR. BUCHWALD: Again, in which case there is a need
17 for somewhat more time to be able to bring it to them and spend
18 the time so that they can go over it with us physically there.
19 So, we would ask under the circumstances, I would join
20 Mr. Greenfield in a request for three weeks.

21 THE COURT: I take it you join in that application,
22 Mr. Jasper?

23 MR. JASPER: I do, your Honor, because it is a
24 practice of that both U.S. attorneys have started recently that
25 you can't leave this 3500 material with them. And it does

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1 impose a burden because you're trying to prepare and get ready
2 for trial, the defendants can offer, very often, a unique
3 perspective with respect to the 3500 since very often these are
4 people that they know. So, if you have to go over to the MCC
5 in this case and sit there and can't leave and be doing other
6 things it does create a burden.

7 THE COURT: When did this practice begin, actually?

8 MR. BAUER: I don't have a firm date, your Honor, but
9 I think it is for the last couple of years.

10 MR. BUCHWALD: It is at least a year.

11 MR. BAUER: Judge, I was also talking to Mr. Nawaday
12 and we are sensitive to what defense counsel is saying. What
13 we will do is we will move it up another week and we will have
14 it ready for Friday, April 4th.

15 THE COURT: Okay.

16 MR. BAUER: What I will also say is that we will talk
17 to our colleagues. At least one colleague figured out a way to
18 have a protective order on providing the actual materials in
19 jail to the prisoners in a way that only they can see it on an
20 electronic device while in the law library and they couldn't
21 distribute it. Obviously the reason for this policy is that we
22 have had a number of incidents where 3500 material was
23 distributed throughout the jails and cooperating witnesses
24 were -- that their safety was compromised. So, we are not
25 opposed to being creative about letting the defendants see it

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1 in jail so long as it can't be distributed. It relies on the
2 efforts of the jail, too, so I'm not going to promise that that
3 can be done here but we are not opposed to it.

4 THE COURT: Look. It sounds like there are a lot of
5 competing interests at play here. I was unaware of this
6 particular policy. I understand it but I also understand the
7 need of these defendants to be able to properly prepare for
8 trial. It sounds like the parties are -- it sounds like the
9 government is willing to engage in some further discussion. I
10 think the offer that they've made to provide the 3500 material
11 by April 4th seems reasonable, almost what you asked for.

12 MR. BUCHWALD: Could I ask for the 3rd so that we are
13 getting it on a Thursday and can at least potentially notify
14 the clients on the Friday of who the witnesses are?

15 THE COURT: Can you push it up a day, Mr. Bauer?

16 MR. GREENFIELD: Have a conference with the office.

17 MR. BAUER: I hate to encourage Mr. Buchwald but,
18 sure, April 3rd is fine.

19 THE COURT: Okay.

20 MR. BUCHWALD: Thank you.

21 MR. BAUER: But, Judge, just to be clear on the issue
22 of the 3500, it is our policy -- our policy involves us
23 requesting the Court to sign a protective order so it is
24 presumptuous of us, both parties to assume that are you going
25 to sign it but most of your colleagues on the bench do.

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1 THE COURT: Very well.

2 Mr. Jasper?

3 MR. JASPER: Judge, I just had a brief question which
4 you might put to the government's counsel.

5 With respect to 404(b) notice, in light of the fact
6 that a drug conspiracy has been expanded by about four years or
7 so, does that notice involve what the government perceives to
8 be strictly 404(b) notice as opposed to uncharged conduct? In
9 other words, sometimes the government might say that a
10 particular act is actually substantive evidence of the
11 conspiracy and they may or may not feel as though that
12 obligates them to give notice but if you get a surprise of
13 something that is argued that is not 404(b) but is actually
14 substantive evidence in furtherance of this enlarged
15 conspiracy, I would just ask does that notice include uncharged
16 conduct apart from 404(b?)

17 THE COURT: I have no idea what the answer to your
18 question is.

19 Do you, Mr. Bauer?

20 MR. BAUER: I'm not entirely sure of what the question
21 is getting at, your Honor. What I will say is that we have a
22 five-year period where these defendants have been alleged to
23 sell drugs and to possess firearms in furtherance of that. To
24 the extent the evidence is direct evidence of selling these
25 drugs during those five years or possessing guns in furtherance

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1 of those selling drugs then, yes, we have that as direct
2 evidence. I think while typically my practice in 404(b) is to
3 write a paragraph of what I said to you now, I wouldn't provide
4 the specifics of it but if, let's say, they were selling drugs
5 prior to or different drugs or with different co-conspirators.
6 That is the nature of what I envision the 404(b) notice in this
7 case to be.

8 I hope that answers the question.

9 MR. GREENFIELD: One last thing of a question that was
10 asked of me by my client and I think the answer is no but I
11 want to be clear and the government be clear on it also: There
12 is no Rule 16 material being provided to us with respect to the
13 guns, narcotics and anything else that is part of the expanding
14 conspiracy so I assume that --

15 THE COURT: You mean no additional Rule 16 material.

16 MR. GREENFIELD: There is not going to be any evidence
17 of specific guns or drugs during the course of the trial in
18 this expanded conspiracy; is that correct?

19 THE COURT: Again, the representation that the
20 government has made is that there is no additional Rule 16
21 material but I will let Mr. Bauer respond.

22 MR. BAUER: I appreciate you saying the word
23 "additional" because there was Rule 16 discovery produced even
24 prior to this, to these new charges related to prior arrests
25 and other interactions with New York PD.

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1 THE COURT: Very well.

2 MS. STAFFORD: Your Honor, can we order the minutes
3 for today?

4 THE COURT: Sure.

5 MS. STAFFORD: For all defendants, please?

6 THE COURT: Sure. Absolutely.

7 Anything further?

8 MR. BAUER: Not from the government, your Honor.

9 MR. GREENFIELD: No, your Honor.

10 THE COURT: Very well. I would ask the marshals to
11 take these gentlemen.

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